

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 6584 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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AGRICULTURAL FINANCE CORPORATION LTD - Petitioner(s)

Versus

NARESHKUMAR H SHAH - Respondent(s)

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Appearance :

MR AMIT PANCHAL for Petitioner

MR ALPESH RAJPURIYA for Respondent

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/08/2007

ORAL JUDGMENT

1. Shri Amit Panchal, learned counsel for the
petitioner; Shri Alpesh Rajpuriya, learned
counsel for the respondent.

2. Industry, being aggrieved by the award dated 31.1.98 passed by the Labour Court, Ahmedabad, in Reference [LCA] No.1242/1990, is before this Court with a submission that the award made in favour of the workman is bad.

3. The short facts necessary for disposal of the present writ application are that the respondent-workman was appointed as temporary employee; on an earlier occasion, he was removed from the services; removal came to be challenged before the Labour Court and, the Labour Court directed reinstatement of the workman. After reinstating the workman, vide letter [Annexure:C], the workman was again retrenched with the observation that in view of the over-staffing and in view of the seniority list, respondent workman being the junior-most, was required to be retrenched. The said order came to be challenged before the Labour Court. The workman submitted before the Labour Court that his retrenchment was illegal, because, he was a permanent employee and no seniority list was maintained. The present employer-Industry

submitted in the defence that the seniority list was exhibited in their Ahmedabad office and as the workman was junior-most, looking to the non-availability of the work and excess staff, he was rightly removed after observing the provisions contained in Section 25F of the Industrial Disputes Act, 1947.

4. The learned Court below, after recording the evidence and hearing the parties, held that the Industry failed in producing the seniority list and consequently failed in proving that the workman was junior-most and under the principles of 'last come first go', he could be sacked. The Labour Court directed reinstatement of the workman with 100% back wages and consequential benefits. The employer is before this Court with a submission that the award is bad.

5. Shri Panchal, learned counsel for the employer submitted that from the perusal of Annexure:C, it would be clear that in view of the seniority list, which was exhibited in the Ahmedabad Branch office, it would be clear that the workman was junior-most; he came in last and

was to go first in case of excessive staff. He also submitted that due to some lapse or inadvertence, if seniority list could not be produced before the Labour Court, capital punishment could not be awarded against the interest of the Industry. He submitted that either Industry be allowed to produce seniority list before this Court, or in the alternative, the matter be remanded back to the learned Labour Court for further trial.

6. Shri Alpesh Rajpuria, learned counsel for the respondent-workman, however, submitted that if the parties knew that what was their case, what they were required to produce, what they were required to say before the Court, then, at the High Court level, in a petition under Article 227 of the Constitution of India, other side cannot be allowed to produce additional documents nor there is any justifiable reason for remand of the matter.

7. Notice, Annexure:C does mention that the seniority list has been exhibited at Ahmedabad branch office. The notice further says that the

workman being junior-most was required to be retrenched. If there was no challenge to these two statements, then that would have been the end of the matter, but the moment, these statements are challenged before the Court of law, then, person making such statements was required and obliged to prove the allegations made in Annexure:C. Unfortunately, not only the seniority list was not produced but even the appointment orders or joining reports of the other three persons who were claiming to be seniors over and above the workman were also not produced before the Court. When these documents were in exclusive possession of the Industry, then, the Industry was obliged to produce each and every document. The Industry, on the basis of the appointment order, joining reports and the seniority list was contending that the workman was junior-most and if this was their stand, then, they were required to prove the same. The oral evidence would not be worth acceptance in a case where the parties are relying upon a document. Such facts can be

proved by production of the documents. The Court below was not unjustified in holding that the Industry failed in proving the seniority list and the fact that the workman was junior-most.

8. So far as the question of additional evidence before this Court is concerned, nobody stopped the Industry from producing the seniority list during the pendency of this petition. Along with the writ application or at any time thereafter, the petitioner could produce the documents with additional affidavit, but they missed that opportunity also. Even at the time of final hearing of the matter, the petitioner-Industry prayed for time for production of the seniority list but did not produce copy of the seniority list to satisfy the Court. Under the circumstances, no further opportunity can be given to the present petitioner to produce the seniority list or other documents. The question of remand should not unnecessarily detain this Court, because, neither in the petition it is pleaded nor during the course of the arguments the Court

could be satisfied that what particular reason restrained the present petitioner in not producing the seniority list before the lower Court. If the Industry has committed lapses at every step, then, they cannot be allowed to take advantage of their own wrong. Such prayers are rejected. On the merits, in relation to the reinstatement, I am unable to hold that the Court below was wrong or unjustified in directing reinstatement.

9. So far as the question of back wages and grant of other benefits flowing from the post are concerned, this Court must concede to the argument raised by the learned counsel for the petitioner to some extent.

10. It would be trite that in case of daily wagers, temporary employees, ad-hoc employees, no benefit in terms are available to these employees which are available to a permanent employee. In accordance with the seniority list required to be maintained by the Industry under Section 25G of the Act, such temporary, ad-hoc, fill-in gap employee would be entitled to be

included, such inclusion in the list would mean reinstatement. A person who does not become permanent employee would not be entitled to the benefits which are available to a permanent employee. Similarly, a temporary employee would not be entitled to 100% back wages looking to the character of his employment.

11. Taking into consideration the totality of the circumstances, I modify the award from 100% back wages to 50% back wages from the date of the Reference till the date of the award made by the Court below. I direct that the workman would be entitled for inclusion of his name in the list of temporary employees maintained by the Industry and he would be entitled to the benefits which are available to the temporary employees only.

12. The writ application to the extent indicated above, is allowed. Rule is made absolute to the aforesaid extent. No costs.

[R.S. GARG, J.]

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